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## Cyberbullying Legislation In Poland And Selected EU Countries

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### Abstract

Cyberspace used by all the institutions and structures of the EU and EC (developing networks of common use and specialized networks), with a wide access for individual customers. All of this is governed by relatively few regulations. However, given that Community law (*acquis communautaire*) is a hierarchically organized system of rules, it should initially be assumed that regulations on cyberspace would become a part of this system, i.e. subsystem. The common interest requires that the network users know those regulations and that measures for the elimination of cybercrime have been taken. The purpose of this article is to analyze the laws in terms of their legitimacy with the intent of the legislature and the public needs for cyber bullying in Poland and the EU law.

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### 1. Introduction

The virtual space area, in recent years, has become “the subject of interests” for lawyers as well. Regardless the way we will evaluate the influence that media on society, undoubtedly adjusting law to the needs of shaping IT society is “the task for the moment”. It is one of the most important legislative challenges in Poland and the EU (Barta, Markiewicz: 11-12). Contemporary system of regulations and implemented changes in it, lead therefore to restrictive fighting also those acts of violence that are committed via electronic media and on the level of cyberspace. In this dissertation, general issues of the cyberspace phenomenon, present analysis of the Polish Penal law and the EU’s law concerning stalking and other forms of cyber bullying are presented.

### 2. Introduction into cyberbullying issues

Cyber bullying becomes more and more serious problem in most developed countries, where using new electronic technologies has become inseparable element of functioning society in the age of globalization. The latest digital devices creating the world of new technologies and cyberspace, influence globally the changes within

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different from threats known so far and, simultaneously, create the need to provide safety for the youngest generation. Children and the youth have relatively the least consciousness of the threats coming from cyberspace. Their parents, however, being the first and the most important educative environment, are not aware of potential negative consequences of using the latest technologies within new multimedia opportunities and functioning information in the cyberspace. In the present times, the prefix “cyber” is connected with new electronic technologies and it is used in the meaning of IT, interactive (it describes everything that relates computers). Cyberspace means communication space created via the Internet connection system. Cyberspace, similarly to the telecommunication facilitates its users contacts, also in the real time. The space of open communication via connected computers and information connections working in the whole world. The definition includes all electronic communication systems (also the classical telephone networks), which transfer information coming from digital or meant to be digital sources. Cyberspace slowly becomes the basic canal of information exchange ([www.i-slownik.pl/323,cyberprzestrzen](http://www.i-slownik.pl/323,cyberprzestrzen))

Cyberspace is relatively young type of violence, which could appear because of technological development in the last 20 years. The two most important inventions of that period are the Internet and mobile phone. The Polish name of *cyberbullying* derives from the set of two words *cyber* – which means computer or electronic and *bully* which means brutality. That form of terror developed at the end of the 20<sup>th</sup> and the beginning of the 21<sup>st</sup> century.

The phenomenon was earliest described in the developed countries such as the USA or Canada. The American researchers of that subject (Ybarra, Mitchell and Lenhart 2010) indicate that the first information concerning aggression in the Net appeared in the USA in 2003 and soon attracted significant public opinion remark. In September 2006 in the USA there was a remarkable interdisciplinary expert conference focused on media and aggression committed by young people via media. The panel was accompanied by presentations of contemporary research concerning not only the electronic aggression itself but also individual and social factors, which cause that some young people become its victims or perpetrators. Researchers mainly focused on how much the conditions, symptoms and consequences differ from those connected with media considered traditional ones, e.g. television (Huesmann 2007: 6-13). Other researchers of the cyberspace issues, namely Corinne David - Ferdon and Marti Feldman Hertz pay attention on the variety of notions used according to committing acts of aggression via the Internet and mobile phones. It often happens that although there are different notions, there is lack of unanimous criteria to use them, and even the attempt to clear defining there designates. The above-mentioned authors highlight a huge variety of electronic aggression acts that are in the area of interests of the researchers dealing with the issues. The analyzed types of electronic aggression concern both events of “minor importance” as well as acts of significant potential of victimization (Ferdon, Hertz 2007: 41, 1-5).

Robin Kowalski, Susan Limber and Patricia Agatston in 2006 (Kowalski, Lamber, Agatston 2010: 1-3) attempted, as the first ones, to present integral knowledge concerning cyberbullying. They claim cyberbullying, also called the Internet or electronic violence is defined as acts of aggression committed via e-mails, Internet communicators, text or graphic messages transferred on mobile phones, in chat rooms or on websites. Although it has some common features with traditional school violence, cyberbullying is rather separate phenomenon, which has appeared in the area of interests of media and academic spheres not long ago. The researchers highlight that one of the difficulties met by those dealing with the issue is lack unanimous definition of cyberbullying (Kowalski, Lamber, Agatston 2010: 76). A part of the definition limits the use of the notion of *cyberbullying* only according to the violence among peers, other does not put any age limits, and undoubtedly however the terms are used most often in the context of violence among the youngest. In Poland, the issue of cyberbullying has existed for short time and, according to Jacek Pyżalski we are on the level of building theoretical basis of the knowledge of electronic aggression, meaning cyberbullying, which we base on relatively small empiric material collected in the research conducted so far. He claims there are not many publications, which present, in a synthetic way, the knowledge gained so far by researchers (Dooley, Pyżalski, Cross 2009: 182-188).

The lack of clear definitions causes that researchers speaking about the same phenomena use different descriptions as well as the same notions according to different phenomena. It makes not only the communication confusing but also deep discussion on preventive and intervention solutions concerning electronic aggression. Moreover, it is difficult to make the terminology unanimous since electronic aggression issues are of interdisciplinary character where its particular symptoms are described differently according to which discipline

their representatives refer to the problem. At the same time, electronic aggression symptoms and their other conditions change together with the changes of technological changes and those within the services provided in social media. It means constant necessity to update electronic aggression conceptualization as well as modification of research devices in which it is operationalized (Pyżalski2012: 121-133).

Robert S. Tokunaga wants to create the definitions integrating the most important elements repeated in the conceptualizations of various authors. He proposes to such definition of cyberbullying [...] *each behavior realized via electronic or digital media, committed by units or groups which communicate regularly enemy or aggressive information in order to harm or make discomfort at others* (Tokunaga 2010: 278).

### 3. The Polish Penal law on cyberstalking and other forms of cyberbullying

Nowadays, tele-information systems supported stalking and enlarged the scale of the phenomenon, since modern tele-information shortened the distance between a victim and a stalker as well as forms, ways and availability of stalking. Therefore, taking into account the significance of those systems, more and more often the issue of the type of stalking in the shape of cyberstalking is discussed (Kosińska 2008: 34). It means that direct relations between units in social environment are substituted by relations via electronic communication in cyberspace environment (the Internet and mobile webs) which is observed, among others, in long lasting sending texts, MMS messages, e-mails, putting information in forums and Internet chats or making phone calls by stalkers. Since 25 February 2011 the Polish Sejm has passed the novelty to the Penal code, art. 190a, it describes the crime of stalking. The above article came into force on 6 June 2011 (the Penal code Journal of Laws on 2001 No 72 pos. 381). In Poland, the notion of stalking functions as a kind of emotional violence. Some authors claim that cyberstalking was described in Poland only in the article 190a §2 of the Penal code, persistent harassment, stalking (§1 Whoever makes a threat to another person to commit an offence detrimental to that person or detrimental to his next of kin, and if the threat causes in the threatened person a justified fear that will be carried out shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. The same penalty is for those who simulate another person, uses his/her image or other personal data in order to make a material or personal harm. §3 If the consequence of the act described in §1 or 2 is an attempt to commit suicide, the perpetrator shall be subject to the penalty of deprivation of liberty for up to 10 years. §4 The prosecution of the crime described in §1 or 2 is on the detriment person's motion). Adopting such an attitude is not fully correct. Cyberstalking may adopt the form described in that article (e.g. when somebody uses a person's image and personal data and places an announcement on behalf of the person on the date portal) but the features from the art. 190a §2.2 of the Penal code also may be filled via tele-information systems (Śledziwski 2013: 275).

According to the added art. 190a to the Polish Penal code in 2011, whoever causes justified feeling of threat or significantly infringes the person's privacy through persistent harassment shall be subject to the penalty of deprivation of liberty for up to 3 years. New regulations also concern the use of image or personal data of the detriment in order to cause material harm (art. 190a of the Penal code). Such behaviours do not need to occur repeatedly. They may be single acts. The amendment also introduces stalking crime qualified type. If the consequence of the act described in § 1 or 2 of the amended art. 190a of the Penal code is the attempt to commit suicide; the perpetrator is subject to the penalty of deprivation of liberty up to 10 years. Moreover, the amendment changes the note regulating requirements of passing penal judgment by courts (art. 39 of the Penal code), e.g. the ban of maintaining contacts and approaching to particular persons. The article in so far shape predicted only such a possibility according to crimes against sexual freedom, those committed against minors and in case of sentencing for crime with use of crime. After the amendment, such a verdict may be announces by court for "other crime against freedom", namely stalking, persistent harassment. The Polish law creators' practice shows, however, that virtual space demands sometimes-serious changes in the view on basic rules and norms of proceedings. The character of actions make via electronic media proves certain ambivalence in treating categories of freedom of speech. Paweł Wagłowski writes about the problem "Legal system must devote one good in order to protect the other value. Such a collision will occur in case of at least two groups of values worth protection from the legal system point of view. First of all, the right to legal protection of private or family life, dignity and a good name as well as to decide on own private life must be indicated (art. 47 of the Polish Constitution mentions about those values). The right to freedom of expressing own opinions and acquiring and spreading information may be put in oppositions to them

(art. 54 par.1 of the Polish Constitution)” (Wagłowski 2005: 291). It is one of the most difficult aspects of the Net reality from the legal order point of view, demanding sensitiveness, consideration and remaining compromise between the two values. Therefore, it is worth remembering that the priority is good of a unit and the whole society, and in that particular case, also good and safety of youth and the youngest members of a society. The principal issue in a general view on the problem is the necessity to implement equal legal status of the crime committed in reality and the Net. Contemporary regulation system and amendments in it lead to restricted fight also those acts of violence that are committed via electronic media and on the level of cyberspace.

It is worth discussing the Polish legal protection of minors in the aspect of art. 200a of the Penal code (§1 Whoever establishes contact with a minor under the age of 15 in order to commit crime described in art. 197§3 p. 2 or art. 200 as well as produces and maintains pornography content via tele-information system or telecommunication system, in order to meet the person through misleading the person, using the mistake of incapability to proper comprehension of a situation or through unlawful threat, shall be subject to the penalty of deprivation of liberty for up to 3 years. §2 Whoever submits a proposal to a minor of sexual intercourse, undergoing or performing other sexual act or participating in production or recording pornography content and aims at its realization via tele-information system or telecommunication net shall be subject to the penalty of restriction of liberty or deprivation of liberty for up to 2 years (Journal of Laws 1997 No 88 pos. 533 with later amendments).

Nowadays, in Poland, the law does not provide fully effective protection of minors against virtual violence. Using the existing legal regulations it is possible to protect (although not completely) children and youth against acts of virtual violence on the basis of the Penal code and Civil code. Diversification of those proceedings is significant with regard of diversity of virtual violence acts via new technologies causes that they are not within the Penal code range. From that reason, it is impossible to accuse the perpetrator of committing penal crime and directing the case to the further prosecution and court proceedings. In such situations, it is possible to claim damages on the civil way, according to the civil code. It is important to present explanation that if the virtual violence exists towards young people under 18, their parent or legal guardians conduct legal actions. It is impossible to take a case of a child, minor, detriment by virtual violence without the cooperation with parents. However, if the perpetrator of virtual violence is a minor under 17, the case of the action of the minor with the character of virtual crime is in the competence of a Family court or Court of minors relevant to the place of stay of the virtual violence perpetrator. If the case of virtual violence is reported in the police and prosecutor’s office and proceedings shall be initiated, the virtual violence victim, who is minor, must be heard simultaneously in the character of a witness (Kotomska 2012: 85).

#### **4. The EU’s law concerning cyberbullying**

In relations with dynamic development of the Internet threats (Gruchola 2012: 37) it is necessary to undertake actions, both on the level of the country and the European Union, that fight all forms of cyberbullying threatening more and more society and citizens. Legal regulations are one of the instruments to fight cyberbullying. On the level of the European Union, there are key regulations concerning the issue: the Strategy of the European Commission on combating cyberbullying (Conclusion of the Council 2009/C62/05 on 27 November 2008) and it submits directives concerning legal protection of minors in cyberspace: Directive 2011/92/UE on combating improper treatment in sexual aims and sexual abuse of children and children’s pornography; Directive 2002/58/WE on privacy and electronic communication and the Announcement of the European Commission: *In the direction of the general strategy for combating cyberbullying*. The Frame decision 2005/222/WSiSW orders punishment for: purposed, unlawful access to the whole or part of information system (art. 2), purposed, unlawful, serious infringement or disconnection of the information system

Functioning via implementation, transferring damaging, deleting, changing, concealing or making the computer data unavailable (art. 3) as well as purposed, unlawful deleting, damaging, worsening, changing, concealing or making the computer data unavailable in the information system (art.4), at least in the cases which are not of less importance. The decision demands punishment also to those who manage, assist or persuade to commit crime and it assumes punishment for an attempt to commit crime (which is a common case in cyberbullying) (Kosiński, Kmiotek: 5).

The Directive 2002/58/WE on privacy and electronic communication obliges the Internet service suppliers to provide security of the service. In the Communication of the European Commission, Council and the Committee of Regions on 2007 title "Towards an EU strategy of combating cyberbullying" the following cybercrimes were mentioned (KOM2007 267: 7):

- Traditional crime connected with computers, including molesting children;
- Content crime including children's pornography, delivering criminal instructions, offers to commit crime, molesting, lobbying through the Net, spreading false information (e.g. black PR, pump-and-dump schemes).

Other legal acts, referring to a particular criminal problem, include regulations concerning unlawful use of the Internet (Directive 2011/92/UE) on combating indecent treating in sexual aims and sexual abuse of children and children's pornography (Directive 2011/92/UE: 1-4). It proves particular trying of the Commission within children's protection, especially those connected with combating all types of materials and actions connected with sexual abuse children, illegally published via information systems and grooming. The next document is the Strategy of the European Commission on 28 November 2008 on combating cyberbullying (Conclusion of the Council 2009/C 62/05: 1-4). The Strategy recommends undertaking numerous operational measurements, e.g. founding so called "Cyberpatrols", common investigation teams, and implementing remote searching in the Internet and separate research units that would be involved in combating cyberbullying in the next 5 years. It also implements particular solutions for closer cooperation and exchange of information between judgement organs and private sector units (Kosiński, Kmiotek: 6).

## 5. Conclusions

As the above dissertation assumes, in the Polish and the EU legislation there is no single legal act that would completely and directly regulate cyber bullying issues. According to huge diversity of cybercrime types, there is no one definition of crime and offences committed in cyberspace (Gruchola 2012: 85). Efficient cooperation between investigation organs often depends on at least partial unified definitions of cyber bullying, thus the key aim remain the works on harmonization and amending legal regulations of the member states in the area. Constantly appearing new threats in cyberspace obliges to implement additional legal regulations and their unification in all member states.

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